THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 19062 of 2001

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Dated 02/09/2005

Between:

M/s Concast (India) Limited, 47-48, Jolly Market Chambers II Nariman Point, Mumbai-400 021, rep by its Director Sri S.D.Toorkey

..... PETITIONER

AND

1 Assistant Commercial Tax Officer, Check-Post, Medchal.
2 The Branch Manager, Centurion Bank Limited, F-416, Minerva

Complex, Secunderabad - 500 003.

.....RESPONDENTS

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 19062 of 2001

ORAL ORDER: (per Sri BRSR,J)

Notwithstanding the contention of the learned special standing counsel for the department that the check-post authorities have rightly collected the amount of Rs.80,239/- from the petitioner since the goods were not supported by any documents whatsoever, in our considered opinion, the subject matter is squarely

covered by the decision rendered by a Full Bench of this Court in ***AMBICA LAMP HOUSE, RAJAHMUNDRY Vs. THE COMMERCIAL TAX OFFICER (INT)-I ENFORCEMENT, HYDERBAD.*** The Full Bench of this Court took the view that in the absence of any order of assessment, the question of levying and collection of sales tax as such does not arise. The same principle would apply to the fact situation on hand. Admittedly, there has been no assessment order as such passed by any competent authority and therefore the question of collection of tax as such does not arise.

For the aforesaid reasons, the writ petition is disposed of directing the respondents to return the amount of Rs.80,239/- collected from the petitioner within a period of two weeks from the date of receipt of a copy of this order. However, this order shall not preclude the respondent authorities from proceeding further against the petitioner in accordance with law for levying and collecting the sales tax, if any, liable to be paid by the petitioner.

The writ petition shall accordingly stand disposed of. No costs.

(B.SUDERSHAN REDDY,J)

dated 02.09.2005

(S.ANANDA REDDY,J)

msv